

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

SAMUEL D. EDWARDS,

Plaintiff,

v.

PEPSICO, INC., a North Carolina
corporation; PEPSI-COLA COMPANY, a
North Carolina corporation; CONOPCO,
INC. d/b/a THOMAS J. LIPTON COMPANY,
a Virginia corporation; WM. W. MEYER &
SONS, INC., an Illinois corporation;
B. W. SINCLAIR, INC., a Texas corporation;
LOCKWOOD GREENE ENGINEERS, INC.,
a foreign corporation; and JANE DOE,
a foreign resident,

Defendants;

Case No. CIV-04-096-W

STATUS REPORT

Pursuant to this Court's Order of June 16, 2009, Holden & Carr respectfully submits this Status Report to the Court concerning the status of the parties' distribution of funds held in trust stemming from the above referenced litigation. [Dkt. No. 476].

1. On July 1, the Law Firm of Holden & Carr transferred the amount of \$628,780.84 to an account specified by the law firm of Capron & Edwards for receipt of these funds. There has been no agreement as to the distribution of the remaining sum of the attorney fee proceeds, which remain held in trust by Holden & Carr at this time pending the outcome of either an agreement of

the parties or an adversary hearing before the Court to determine the proper amount to distribute to each party.

2. Specifically, the remaining amount is being held in Trust by Holden & Carr in order to pay the firm for it's hourly fee as determined under the contract at issue, the interest on the cost amount already paid, the interest on the fee award itself and to begin to calculate the intentional and fraudulent under billing by Mr. Capron in this matter¹. Specifically, while still employed by Holden & Carr, knowing he would be leaving the firm and knowing he would be making efforts to enforce the hourly provisions of the contract, Capron was intentionally not billing his time on this matter in an effort to make the firm's total bill less. For example, after the first day of trial, Capron put no billing whatsoever in the case until approximately one month later for some brief communication regarding settlement and no further billing at all from Capron prior to his departure. Despite almost a full week of trial, post trial motions/filings, post trial letters and settlement attempts and post trial initial filings in the Tenth Circuit, Capron was not accurately billing his time resulting in damage to Holden & Carr. A full audit of the file will be necessary to determine the full amount of the under billing. Mr Capron has

¹ Pending at this time is the case of Holden, PC v. Stephen Capron, et al. CJ-2009-4826, wherein the parties are engaged in litigation for Mr. Capron's fraud. As such, resolution of this Attorney Fee matter herein does not waive or resolve the matter regarding Mr. Capron's acts and omissions regarding this file.

the file in its entirety and a full audit is not possible without that file and other materials.

3. The parties attempted to reach an agreement as to the filing of a joint statement, but could not agree as to its contents.

Respectfully submitted,

s/ David R. Ross

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ATTORNEYS FOR HOLDEN & CARR, P.C.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 13th of July, 2009, a copy of the foregoing instrument was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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s/ David R. Ross
David R. Ross